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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re RUDOLPH R., A Person Coming  
Under the Juvenile Court Law.

B241262  
(Los Angeles County  
Super. Ct. No. CK20954)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RUDOLPH R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,  
Veronica McBeth, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for  
Defendant and Appellant.

John F. Krattli, Office of the County Counsel, James M. Owens, Assistant  
County Counsel, Navid Nakhjavani, Deputy County Counsel, for Plaintiff and  
Respondent.

Appellant Rudolph R. (Father) appeals the juvenile court's finding of jurisdiction under Welfare and Institutions Code section 300, subdivision (b), and its dispositional order requiring him to participate in individual counseling, parenting classes and fatherhood education.<sup>1</sup> Finding the court's orders supported by substantial evidence, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On December 29, 2011, 15-year old Rudolph R. (Rudy) was released from juvenile custody. At the time, his parents, Father and Magdalena M. (Mother) were incarcerated.<sup>2</sup> In addition, there was a dependency proceeding pending with respect to Rudy's two younger siblings, Isaac and Alex, and three half-siblings.<sup>3</sup>

On January 4, 2012, the Department of Children and Family Services (DCFS) filed a petition alleging that Rudy had no parent to provide care,

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Mother has a lengthy criminal history going back to 1993, including arrests and/or convictions for burglary, battery, grand theft, false impersonation, and possession of a controlled substance. In 2008, she was sentenced to 180 days and 270 days in jail. In 2009, she was sentenced to 37 days in jail. In 2010, she was sentenced to 18 months imprisonment. Father's criminal history goes back to 1985 and includes convictions for taking a vehicle without the owner's consent, burglary, vehicle theft, corporal injury on a spouse, and possession of a controlled substance. He was sentenced to various terms of incarceration in 1994, 1997, 2008, and 2010.

<sup>3</sup> That petition alleged that Mother had made inappropriate plans for the children's care and supervision during her incarceration and had a history of illicit drug use. It further alleged that Father was incarcerated and failed to provide Alex and Isaac with the necessities of life, including food, clothing, shelter and medical care. Rudy was not named in that petition because he was a ward of the court under probation department supervision when it was filed (September 2, 2010). The family had been the subject of multiple referrals dating back to 1995, primarily involving Mother and possible neglect. The referrals were investigated and deemed inconclusive or unsubstantiated or Mother was provided voluntary services. In 1999, a referral was made for domestic violence perpetrated by Father, but at the time of the investigation, Father was incarcerated and Mother and the children were in a shelter, so no proceedings were instituted.

supervision and the necessities of life, including food, shelter, clothing and medical care, because Mother was incarcerated and Father's whereabouts were unknown.<sup>4</sup> Rudy was detained and placed in a group home. The court gave DCFS discretion to place him with any appropriate relative.

In January, the caseworker learned that Father would be released from prison on January 31 and planned on residing with his mother. The caseworker interviewed several relatives, including the paternal grandmother and an aunt who had had custody of Rudy in the past, but was unable to locate an appropriate relative placement.<sup>5</sup> The paternal grandmother stated she could not take Rudy. She reported that at one time, Father's children had been placed with her, but they were removed when she decided "it was too much for her." Rudy was left in his placement at the group home, where he was doing well.

In March 2012, the caseworker reported that Father had been released from custody and was living with the paternal grandmother. Father did not comply with a request to go to DCFS offices for an interview, blaming his lack of a car. Rudy stated he "would not mind" living with Father, but preferred to stay in the group home until Mother was released.<sup>6</sup> Father claimed to have worked construction and provided for Rudy and the other children when he was not incarcerated.<sup>7</sup> When he was incarcerated, he "hop[ed] [M]other would step up and take care of the children." The caseworker stated that Father had no job or transportation and was

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<sup>4</sup> The caseworker was aware that Father was incarcerated, but did not know the identity or location of the facility.

<sup>5</sup> Rudy's paternal grandfather, who lived in Victorville, offered his home, but DCFS did not want to place him so far from his siblings, and Rudy stated he would prefer to remain in the group home.

<sup>6</sup> Mother was scheduled for release in May 2012.

<sup>7</sup> Father reported he had been in prison in 1994, in 1997, from July 2008 to August 2009, and from January 2010 to January 2012.

not ready to assume custody of Rudy. In addition, there did not appear to be a “real bond” between father and son. DCFS recommended that Father be provided reunification services, including conjoint therapy, “to work on building a relationship” so that Rudy could “transition . . . to [Father’s] care.” However, Father stated he did not want to attend classes or work on building a relationship with Rudy if Rudy was going to “abandon him” when Mother was released.

At a hearing on March 1, 2012, Father appeared for the first time. His attorney announced that jurisdiction would be contested and requested that Rudy be released to Father. The court put the matter over for a contest, granted Father visitation, and gave DCFS discretion to place Rudy with Father once his home had been assessed.<sup>8</sup>

Later in March, the caseworker visited the paternal grandmother’s home. The grandmother and her adult daughter lived in one of the three bedrooms. The grandmother’s estranged husband still lived in the second bedroom because he could not afford to move out and the couple could not afford to divorce. Father lived in the third bedroom. An adult son lived in a detached room in the back of the house.<sup>9</sup> The grandmother said she would prefer that Father reunify with Rudy after he had his own place because there was not enough room for the boy in her house.

At the jurisdictional/dispositional hearing on April 23, 2012, the court found that Father was unable to provide Rudy the necessities of life, including food, shelter and clothing, justifying assertion of jurisdiction under section 300,

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<sup>8</sup> The court’s minute order stated that father’s visitation would be monitored; however, at the hearing, the court had indicated that visitation would be unmonitored. The discrepancy was discussed at a subsequent hearing, but never clarified.

<sup>9</sup> Neither the husband nor the other son was willing to submit to a background check. In addition, the house was in a state of disrepair, needing, among other things, a lock on the front door.

subdivision (b) (failure to protect). Father’s counsel asked that Rudy be released to Father, suggesting the boy could stay with Father at the paternal grandmother’s house while Father looked for another place to live. The court pointed out that the grandmother had never indicated a willingness to allow the boy to move into her home. Turning to disposition, the court ordered Father to participate in individual counseling, parenting classes, and a fatherhood class.<sup>10</sup> The court permitted unmonitored visitation. This appeal followed.

## DISCUSSION

### A. Jurisdiction

In order to assert jurisdiction over a minor, the juvenile court must find that he or she falls within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) DCFS bears the burden of proving by a preponderance of the evidence that the minor comes under the juvenile court’s jurisdiction. (*Ibid.*; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) “We review the juvenile court’s jurisdictional findings for sufficiency of the evidence.

[Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible. [Citation.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Section 300, subdivision (b), the provision under which the court asserted jurisdiction over Rudy in the present matter, permits the court to adjudge a child a dependent of the juvenile court where “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately

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<sup>10</sup> Father indicated he was already in a parenting class and individual therapy. His counsel nonetheless objected to the individual counseling requirement.

supervise or protect the child . . . .”<sup>11</sup> A true finding under subdivision (b) requires proof of: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) DCFS must show that at the time of the jurisdictional hearing there was a current risk of substantial harm, or that the child would be at substantial risk of serious physical harm in the future. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1023; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.)

When Rudy was released from juvenile custody on December 29, 2011, Father and Mother were incarcerated and unable to care for him. Neither made arrangements for another responsible adult to care for their son or to provide food and housing. (See *In re A.A.* (2012) 203 Cal.App.4th 597, 606-607 [incarcerated parent can avoid assertion of dependency jurisdiction by making suitable arrangements for child’s care during period of incarceration].) Had DCFS not detained Rudy, he would have had nowhere to go.

Father does not dispute that Rudy was properly detained due to Father’s incarceration, but suggests that in determining jurisdiction, the inquiry should have focused on more current circumstances. Father contends that no evidence supported a finding that he could not have competently parented and provided for Rudy as of the date of the jurisdictional hearing. We disagree. In determining whether a child is at risk of current or future harm for jurisdictional purposes, the

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<sup>11</sup> We note that section 300, subdivision (g), which provides for juvenile court jurisdiction where “[t]he child has been left without any provision for support,” could have supported an alternate basis for assertion of jurisdiction. (See *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1128-1129 [court appropriately asserted jurisdiction over minor under section 300, subdivision (g) where parents failed to secure a place for her to live when she was released from juvenile hall and refused to allow her back into their home].)

court may properly consider the parent's past actions. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.) The evidence established that Father was in and out of prison throughout Rudy's life, leaving the boy with Mother and "hoping" she would care for him despite her own habitual criminal behavior and frequent incarcerations. A 2010 jurisdictional petition had already been sustained based on Father's failure to provide care for Rudy's siblings, Isaac and Alex. Father's past actions demonstrated that he had no appreciation of the importance of ensuring that a minor has a home and proper adult supervision every day of his or her young life, no matter what the parent's circumstances. Moreover, the evidence was clear that Father had secured no place for Rudy to live, although several months had passed since his release. The paternal grandmother had repeatedly made clear there was no room for Rudy in her home. Substantial evidence supported the court's finding at the jurisdictional hearing that without dependency intervention, Rudy would be at risk of being left homeless, without care and support.

Citing *In re G.S.R.* (2008) 159 Cal.App.4th 1202, Father contends jurisdiction was wrongfully based on his indigency. In *G.S.R.*, there were no jurisdictional findings with respect to the father, who had been noncustodial and deemed "nonoffending." (159 Cal.App.4th at p. 1207.) After proceedings began, the father saw his children nearly every day, while he worked and saved money to rent a place where they could live. (*Id.* at pp. 1206-1207.) There was no evidence, other than his lack of suitable housing at the time of the dependency proceedings, that he was or had ever been an unfit or negligent parent. In reversing an order terminating parental rights, the appellate court stated: "DCFS may not bootstrap the fact that [the father] was too poor to afford housing, which would not have served as a legitimate ground for removing the boys in the first place, to support findings of detriment, all of which flow directly from the circumstances of [his] poverty and his concomitant willingness to leave his sons in his family's care while

he stayed close, maintained familial ties and worked to raise rent money.” (*Id.* at p. 1213.) Here, Father was named in the petition and the jurisdictional finding was not based on his indigency alone but on his voluntary decision to repeatedly engage in criminal conduct, his failure to make arrangements for Rudy’s care and supervision during the periods of separation that inevitably followed, and his failure to make any viable plan for Rudy’s housing or care after his release from incarceration. The court’s decision to assert jurisdiction and assist Father in becoming a competent parent was fully supported.

### B. *Disposition*

After finding that a child is a person described in one of the subdivisions of section 300 and therefore the proper subject of dependency jurisdiction, the court must determine “the proper disposition to be made of the child.” (§ 358.) “A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [¶] . . . [that] [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.” (§ 361, subd. (c)(1).) “The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) On review of the court’s dispositional findings, “we employ the substantial evidence test, however bearing in mind the heightened burden of proof.” (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)



Father's sole contention with respect to disposition is that the absence of evidence to support a jurisdictional finding should lead to reversal of the dispositional order.<sup>12</sup> As we have concluded that the jurisdictional order was supported by substantial evidence, there is no basis for overturning the dispositional order. Moreover, our review of the record convinces us that the dispositional order was fully supported under the appropriate standard. The conclusion that there would be a substantial danger to the boy if placed with Father was supported by evidence that Father had failed to ensure that his son was properly supervised and cared for when his parents were absent. The conclusion that Father and Rudy had no real bond was supported by evidence that Father had been repeatedly absent from his son's life due to his frequent incarcerations, by Rudy's statement that he preferred to stay in the group home rather than live with Father, and by Father's statement that he did not want to work on his relationship with Rudy if the boy was going to "abandon" him when Mother was released. The court reasonably concluded that Father required dependency intervention and participation in therapy, parenting, and fatherhood classes in order to build a bond with his son and to understand the boy's need for consistent care and supervision.

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<sup>12</sup> At respondent's request, we took judicial notice of the order made at the six-month review hearing placing Rudy in Father's custody. Father contends that by bringing the order to our attention, respondent is intimating the matter is moot. An order *terminating* dependency jurisdiction may lead to dismissal of a pending appeal as moot, although courts will generally review the sufficiency of the grounds for assertion of jurisdiction as jurisdictional findings may continue to adversely affect a parent in later proceedings. (See, e.g., *In re Michelle M.* (1992) 8 Cal.App.4th 326, 329-330; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548.) The six-month review hearing order did not terminate jurisdiction. Moreover, it required Father to "continue in all programs" ordered by the court in its dispositional order. Accordingly, the matter is not moot, even as to disposition.

## **DISPOSITION**

The jurisdictional and dispositional orders are affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.